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MICHAEL A. CARDOZO
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

SUMIT SUD
Assistant Corporation Counsel
ssud@law.nyc.gov
(212) 788-1096
(212) 788-9776 (fax)

September 9, 2008

BY HAND DELIVERY

The Honorable Leonard B. Sand
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Julio Melecio v. Mr. Victor, et al.
07 CV 3663 (LBS)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department and the attorney assigned to this matter. I write to respectfully request that plaintiff's Motion For Leave to Amend Complaint Pursuant to Rule 15(a) of the Fed. R. Civ. P. be denied as being premature for the reasons set forth herein.

As way of background, on August 26, 2008, the parties jointly requested that Your Honor endorse a new discovery schedule in light of the fact that plaintiff's counsel wished to file an amended complaint. That order was endorsed by Your Honor on August 27, 2008. In that order, Your Honor instructed plaintiff's counsel to provide a copy of the proposed amended complaint to defendants by September 12, 2008, and that defendants were to agree or reject the proposed amended complaint by September 24th. If agreed to, the amended complaint was to be filed with the Court by October 1, 2008. It should be noted that plaintiff's counsel consented to and, in fact, originally proposed all such dates.

On September 21, 2008, at approximately 2:30 P.M., plaintiff's counsel emailed the proposed amended complaint to the undersigned and stated that defendants now had until Monday, September 8, 2008 at 3:30 P.M. to provide their consent to the proposed amended complaint. If consent was not forthcoming by the 3:30 P.M. deadline, plaintiff intended to file a Motion for Leave to Amend Complaint with the Court.

In response to plaintiff's counsel abrupt demand for an answer within less than twenty-four hours, defendants reiterated to plaintiff's counsel that the August 28, 2008, application that

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9-10-08

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was jointly made by both defendants and plaintiff allowed defendants until September 24th to respond to plaintiff's proposed amended complaint. Thus, defendants position was that plaintiff should except a response within the time provided for by the Court. Moments after this exchange, the defendants received notice that plaintiff was to file his Motion by the close of business on September 8, 2008.¹


Though defendants appreciate plaintiff proposed amended complaint earlier then deadline set forth by the Court, there was a legitimate reason why defendants had requested more then 24 hours to respond. Plaintiff's proposed amended complaint adds fourteen (14) additional parties, an entirely new incident to the one previously alleged, and several baseless allegations against correction officers. All of which require this office to fully investigate and explore such allegations prior to providing their consent to the proposed amended complaint. Such due diligence into plaintiff's proposed amended complaint cannot be expected to be completed with twenty-four hours, as plaintiff's counsel so demanded.

In addition, another reason why defendants had requested the Court allow defendants until September 24, 2008, to provide their consent, was due to the fact that the undersigned is preparing for trial before the Honorable Shira Scheindlin, in the matter of Kareem Annunziata v. City of New York et al., which is to commence on September 15, 2008, and expected to last approximately six (6) days. As such, given the time commitment required to both prepare and conduct a federal trial, plaintiff's demand that the undersigned provide a response to the 125 paragraph proposed amended complaint within 24 hours of it being provided to defendants, is vastly unrealistic and unreasonable.²

Accordingly, defendants respectfully request that the Court deny plaintiff's motion to amend complaint pursuant to Fed. R. Civ. P. 15(a) on the ground that it is premature, and that the Court give plaintiff's counsel leave to renew their motion after September 24, 2008, if defendants no not provide their consent at that time.

Thank you for your consideration herein.

Respectfully submitted,


Sumit Sud (SS 2781)
Assistant Corporation Counsel

¹ At the time of this application defendants have yet to be served with plaintiff's motion, however, plaintiff's counsel did provide a copy of the same via email yesterday, September 8, 2008.

² If Your Honor is so inclined to have a conference regarding this matter, in light of counsel's trial schedule, defendants respectfully request that the conference be scheduled for a date and time after September 23, 2008, that is convenient to the Court.

cc: Alexandra Lewis-Reisen, Esq.
O'Melveny and Myers, LLP
7 Times Square
New York, New York 10036 (by First Class Mail and Electronic Mail)

Endorsement

Plaintiff's motion
to amend complaint is
granted in light of 8/24/08
schedule approved by the Court
on 8/27/08.

Leave to file amended
complaint will be ~~granted~~
as of Sept 24, 2008.

So ordered


9/9/08

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Endorsement reads:

“Plaintiff’s motion to amend complaint is premature in light of 8/26/08 schedule approved by the Court on 8/27/08.

Leave to file amended complaint will be deemed renewed as of Sept. 24, 2008.”

So ordered.